

REMARKS

The Office Action dated January 6, 2009 has been received and reviewed. Claims 1-10 and 30-41 are pending in the application. Claims 1-10 and 30-41 are rejected.

Claims 1, 2, 10, 30, 31, and 40 are amended. Support for the amendment can be found throughout the Specification, and in particular, page 5, lines 5 through 20; page 6, line 17; page 7, lines 21-23; page 8, line 29 to page 9, line 24; and page 10, line 30 to page 11, line 10; page 11, lines 20-22; and Figures 1-8.

The 35 U.S.C. § 112, Second Paragraph, Rejection

Claim 1-10 and 30-38 are rejected under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, it is asserted that "Applicants' recite 'a normally-closed valve,'" that "[i]t is unclear as to what the applicants' are referring to," and that "[c]larification is needed."

At the outset, Applicants note that neither independent claims 1 and 30 nor dependent claims 3-9 (which depend on claim 1) and 32-38 (which depend on claim 30) recite a "normally-closed valve." With respect to claims 2, 10, and 31, this rejection is respectfully traversed.

None of the reasoning presented in support of this rejection addresses why the claims would fail to serve the notice function of 35 U.S.C. §112, second paragraph to one of ordinary skill in the art. Nor does the reasoning discuss why one of ordinary skill in the art would not be able to discern the limits of the claims when the claims are read in light of the specification. Applicants continue to respectfully submit that one of ordinary skill in the art would clearly understand the limits of the terms "normally-closed" and "normally-closed valve" recited within claims 2, 10, and 31.

In the interest of advancing prosecution however, Applicants have amend claim 2, 10, 31, and 40. In view of the amendments, Applicants respectfully submit that the rejection under 35 U.S.C. § 112, second paragraph has been rendered moot. Reconsideration and withdrawal of this rejection are, therefore, respectfully requested.

The 35 U.S.C. § 102 Rejection

Claims 1-3, 6-7, 9-10, 30-32, 35, and 39-41 were rejected under 35 U.S.C. § 102(b) as being anticipated by Kellogg et al. (U.S. Patent No. 6,302,134). This rejection is respectfully traversed.

For a claim to be anticipated under 35 U.S.C. § 102, each and every element of the claim must be found in a single prior art reference (M.P.E.P. § 2131). Applicants respectfully submit that Kellogg et al. fails to teach each and every element of claims 1-3, 6-7, 9-10, 30-32, and 35.

Each of independent claims 1, 10 and 30 recites that rotation of the sample processing device moves at least a portion of the sample material in the process chamber into the mixing chamber through the mixing port when the mixing port is open. This construction is not disclosed by Kellogg et al. and, as a result, Kellogg et al. cannot anticipate claims 1-3, 6-7, 9-10, 30-32, and 35.

In support of this rejection, the connection between capillary channel (610) and mixing chamber (605) of Kellogg et al. has been equated to the recited "mixing port" and the channels (602) have been equated to the recited process chamber (*see, e.g.*, the copy below of Figure 14 of Kellogg et al. as annotated in the Office Action).

Due to its location, however, at least a portion of the sample material could never move from the process chamber (602) into the mixing chamber (605) through the asserted mixing port (as recited in claims 1, 10, and 30) because the asserted mixing port is located on the wrong side of the mixing chamber (605). More specifically, the mixing port is not located between the process chamber (602) and mixing chamber (605) and, thus, sample material moving into the mixing chamber (605) from the process chamber (602) cannot move through the asserted mixing port.

In the interest of advancing prosecution, Applicants have amended independent claims 1, 10, and 30 with the relational construct of the mixing chamber and the process chamber to clarify that the distal side of the mixing chamber is located at the same radial position or radially inward of the distal side of the process chamber. As can be readily seen in Figure 14 below, the proximal side, much less the distal side, of the mixing chamber 605) is located radially outward of the distal side of the process chamber (602) in Kellogg.

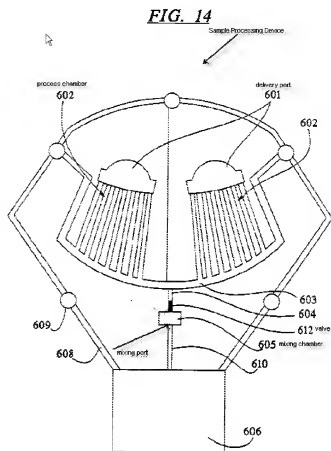


FIG. 14 of Kellogg et al. taken from the Office Action including the Examiner's annotations.

Regarding claims 6 and 7, nothing is identified within the disclosure of Kellogg et al. that teaches that the process chamber is located between a first major side and a second major side of the sample processing device, wherein at least a portion of the mixing chamber is located between the process chamber and the second major side of the sample processing device as recited in claim 6 or that substantially all of the mixing chamber is located between the process chamber and the second major side of the sample processing device as recited in claim 7. The result of such a construction is that at least a portion of the mixing chamber is located above or below the process chamber,

thus offering the opportunity to save space on the device (*see, e.g., Specification*, p. 11, lines 11-14).

For at least these reasons, Applicants respectfully request reconsideration and withdrawal of the anticipation rejection of claims 1-3, 6-7, 9-10, 30-32, and 35 in view of Kellogg et al.

The 35 U.S.C. § 103 Rejection

Claims 4-5, 8, and 33-34 were rejected under 35 U.S.C. § 103 as being unpatentable over Kellogg et al. Applicants respectfully submit that, in view of the deficiencies of Kellogg et al. as discussed above with respect to the anticipation rejection, a *prima facie* case of obviousness has not been established with respect to claims 4, 5, 8, and 33-34. More specifically, no showing has been made as to how or why one of ordinary skill in the art would modify the teachings of Kellogg et al. to reach the claimed invention.

For at least this reason, reconsideration and withdrawal of the obviousness rejection of claims 4-5, 8, and 33-34 are, therefore, respectfully requested.

All outstanding objections and rejections are believed to have been met and overcome. If a telephonic conference with Applicants' undersigned representative would be useful in advancing the prosecution of the present application, the Examiner is invited to contact the undersigned at (651) 733-2180. A notice of allowance for all pending claims is respectfully solicited.

Respectfully submitted,

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